IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7772 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD MUNICIPAL TRANSPORT SERVICE

Versus

JINABHAI MOHANBHAI VANKAR

Appearance:

1. Special Civil Application No. 7772 of 2001

MR HS MUNSHAW for Petitioner No. 1

MR M.B.GANDHI with MR VB GHARANIYA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 13/10/2003

ORAL JUDGEMENT

Heard learned advocate Mr. H.S.Munshaw for petitioner and learned advocate Mr. M.B.Gandhi with learned advocate Mr. V.B.Gharaniya appearing on behalf

of respondent-workman.

2. In the present petition petitioner has challenged the award passed by the Labour Court in Reference No. 1687 of 1998 dated 28.5.2001 wherein Labour Court, Ahmedabad has not granted the relief of reinstatement as, during the pendency of Reference the respondent-workman has attained the age of superannuation on 31.1.2001, therefore, Labour Court has granted full back wages of interim period from 15.11.1996 to 31.1.2001 while setting aside the dismissal order passed by the petitioner.

3. This Court has issued Rule and granted ad interim relief in terms of para 8(C) on 14.9.2001.

4. Learned advocate Mr. Munshaw appearing on behalf of the petitioner has submitted that Labour Court has committed gross error in granting the full back wages of interim period though respondent workman was not remained personally present in the departmental inquiry and not given any reply to the show cause notice and therefore, dismissal order which has been passed by the petitioner is legal and valid even though Labour Court has set aside the same and granted the relief which is unwarranted in the eyes of law. He also submitted that respondent workman was working as a Conductor and at the time when the Bus was checked by the checking staff he is found to have issued the tickets to the passengers without properly punching the same with an intention to re-issue the same tickets on next day and thereby to misappropriate the fund of the Transport Authority. He submitted that during checking, when the checking staff collected the tickets from the concerned passengers the present respondent workman is found to have misrepresented the passengers. Therefore, there was misbehaviour of the passengers with the checking staff. On that basis the charge sheet was served to the respondent workman. Learned advocate Mr. Munshaw has submitted that the respondent workman was not remained present in the inquiry inspite of giving various opportunities to him and no reply was filed against the show cause notice. The interference of the Labour Court in the finding given by the inquiry officer while exercising the power under Section 11(A) of the Industrial Disputes Act, 1947 (for short 'the Act') is contrary to the settled principle of law. He submitted that respondent workman has not challenged the legality and validity of the departmental inquiry and only finding has been challenged by the respondent workman which has been interfered by the Labour Court setting aside the dismissal order. Therefore, according to him the award

which has been passed by the Labour Court, Ahmedabad is required to be quashed and set aside and the respondent workman is not entitled any relief from the Labour Court.

5. Learned advocate Mr. M.B.Gandhi appearing on behalf of respondent-workman has submitted that the whole chargesheet is based upon the presumption and assumption of the checking staff and the competent authority. He submitted that the facts are not much in dispute in respect to the chargesheet because respondent workman has issued the tickets to the passengers without properly punching the same and simultaneously, the said tickets were stored in way-bill by entering the number for which the workman has to give account to the Transport authority. The checking staff has doubted the conduct of the respondent workman because the tickets were not properly punched with an intention to re-issue the same on the next day and thereby to misappropriate the money of the Transport authority. Learned advocate Mr. Gandhi has submitted that so long as the misconduct is not completed and said presumption having no evidence before the departmental inquiry the chargesheet cannot sustain. Cogent evidence in support of such allegation is necessary. In absence of cogent evidence, the conclusion of the inquiry officer that respondent workman has committed misconduct, as alleged in the chargesheet, is a baseless and perverse finding, rightly held by the Labour Court. Learned advocate Mr. Gandhi has also pointed out that there is no discussion in the finding given by the competent authority or the inquiry officer as to on what basis the said presumption has been found to be proved by the inquiry officer. There was no statement of the passengers supporting the say of the checking staff that the said tickets may be recovered from them and can be issued again on the next day. Learned advocate Mr. Gandhi has submitted that the Labour Court has rightly appreciated the findings and rightly held that the finding is baseless and perverse and therefore, dismissal order has rightly been set aside by the Labour Court while exercising the powers under Section 11(A) of the Act. He also submitted that, before the Labour Court the respondent workman was examined vide Exhibit-34 and he was cross-examined by the petitioner. No oral evidence is lead by the petitioner before the Labour Court. Therefore, the respondent workman has deposed before the Labour Court that he remained unemployed during the interim period and gainful employment of the respondent workman is not proved by the petitioner, therefore, considering this fact Labour Court has granted full back wages of interim period as the respondent workman has already attained the age of superannuation on 31.1.2001.

Therefore, learned advocate Mr. Gandhi has submitted that Labour Court has not committed any error which require any interference by this Court while exercising the power under Article 227 of the Constitution of India.

6. I have considered the submissions made by both the learned advocates and perused the record which has been shown by the learned advocate Mr. Munshaw. I have also perused the award passed by the Labour Court as also the chargesheet and relevant records which are annexed to the petition.

7. The question is that in the chargesheet which has been served to the respondent workman, in paragraph 6 at page 26 and 27, three charges were there. The first charge is related to the passengers who were travelling from Bhatta Stand to Kalupur, the fare received by the respondent workman from the passengers is Rs.3.50 but, tickets of Rs.1.75 denomination is issued by the respondent workman without properly punching the tickets. Therefore, allegation is made that after the journey is completed by the passengers, the respondent workman may recover the said tickets from them and may reissue the same tickets on the next day.

The second charge is that the respondent workman has received the fare of Rs.6 from three passengers travelling from Bhatta Stand to Sarangpur, out of three tickets of Rs.2 each, tickets were not properly punched by the respondent workman. Similar allegation and presumption is there that the said tickets may be recovered and can be re-issued by the respondent workman on next trip.

The third charge is that while collecting the said tickets which were not properly punched by the respondent workman, there was some misbehaviour of the passengers with the checking staff which created dangerous situation for the checking staff. Except that no other allegation was made by the petitioner against the respondent workman.

8. The cahrgesheet is dated 4.2.1995 and date of incident is 4.1.1995. The chargesheet was served to the respondent workman and the hearing was fixed on 20.3.1995. Thereafter departmental inquiry was fixed and reporter was examined on 11.7.1996. The respondent workman remained absent at the relevant time. The reporter was examined in absence of the respondent workman and thereafter the inquiry has been declared completed on the same day. Ballif Jethabhai was examined

and after completion of the inquiry on 11.7.1996 the finding was given by the inquiry officer on 22.7.1996 and, on that basis, a show cause notice dated 23.7.1996 was served to the respondent workman against which no reply is submitted by the respondent workman. Ultimately, dismissal order has been passed on 15.11.1996. Before the Labour Court pursis was filed by the respondent workman to the effect that he is not challenging the legality and validity of the departmental inquiry, he is challenging only the finding given by the inquiry officer. On behalf of the petitioner an application was submitted but, ultimately it was not pressed by the petitioner. Initially the dismissal order was challenged before this Court but this Court has directed the respondent workman to raise industrial dispute and that is how the matter has been referred for adjudication to the Labour Court.

9. The respondent workman has attained the age of superannuation on 31.1.2001 and he was examined vide exhibit-34. No oral evidence was lead by the petitioner. In light of this background Labour Court has examined the finding as to whether it is baseless and perverse or not. That reasoning has been given by the Labour Court in para 6 after perusing the chargesheet and ultimately Labour Court has come to the conclusion that the finding given by the inquiry officer is based on presumption and assumption, there is no cogent reason or evidence about malafide intention of the respondent workman to re-issue the tickets on next day after recovering the said tickets from the passengers. Labour Court has considered that no statement of facts were recorded in support of the said allegation by the checking staff. There was no talk with the passengers and the respondent workman about giving back the said tickets to the respondent workman and the entire finding is based upon merely presumption. Merely having doubt is not become a proof against the respondent workman and therefore after examining the finding, Labour Court has come to the conclusion that finding is baseless and perverse and therefore set aside the same and ultimately dismissal order has been set aside by the Labour Court after considering various decisions of the Apex Court and other High Courts.

10. Now the question before this Court raised by Mr. Munshaw is in respect to the tickets which were not properly punched by the respondent workman. The finding given by the inquiry officer is based only on presumption. In respect to the third charge that the respondent workman has misrepresented to the passengers and ultimately passengers have misbehaved with the

checking staff, these allegations have been found to be proved on the basis of the allegation of the reporter which remained unchallenged as the respondent workman was not remained present in department inquiry. Learned advocate Mr. H.S.Munshaw has submitted that while examining the legality and validity of the finding of the inquiry officer, Labour Court has not considered the aspect of the misconduct which has been found to be proved on the basis of the oral evidence of the reporter and for that no punishment has been imposed by the Labour Court while exercising power under Section 11(A) of the Act. Therefore, learned advocate Mr. Munshaw has submitted that the misconduct of not properly punching the tickets and the misconduct that the passengers have misbehaved with the checking staff, which have been proved, some punishment must have to be imposed against the respondent workman. He also emphasized financial crisis and even inability to pay regular salary to the existing workman. Therefore, his submission is that this Court may exercise extraordinary jurisdiction to consider this aspect and pass appropriate orders. Learned advocate Mr. M.B.Gandhi has suggested the same thing that this Court may consider this aspect and pass appropriate orders in light of the fact that there is no bad past record of the workman and the workman has already attained the age of superannuation.

11. I have considered the submissions made by both the learned advocates. So far as the observations made by the Labour Court in respect to the finding which has been declared vitiated, according to my opinion Labour Court has not committed any error while coming to such conclusion because Labour Court has rightly appreciated the finding because there is no evidence in support of such finding of inquiry officer and there is no legal effects available on record which support the finding of the inquiry officer. Therefore, view taken by the Labour Court is perfectly alright and for that Labour Court has not committed any error while coming to such conclusion. But, now the question is about misconduct of not properly punching the tickets and misrepresentation to the passengers by the respondent workman which resulted in misbehaviour of passengers with the checking staff. According to my opinion, for that the evidence of the reporter is enough. Therefore, considering the total length of service of the respondent workman from the date of joining on 1.5.1965, the respondent workman had completed more than 30 years service with the Transport Authority and the past record which has been referred by the Transport Manager at page 18, according to my opinion not a single misconduct relate to dishonesty. These are

minor lapses committed by the respondent workman during the span of 30 years service. For the misconduct of not properly punching the tickets and misrepresentation to the passengers by the respondent workman which ultimately resulted in misbehaviour of the passengers with the checking staff, according to my opinion, now after attaining the age of superannuation on 31.1.2001, if some part of the back wages be denied to the respondent workman being a penalty for the misconduct which has been found to be proved by this Court on the basis of the evidence of the reporter, it will meet the ends of justice between the parties. It is a settled principle of law that while exercising powers under Section 11(A) of the Act this Court can deny the part of back wages as a punishment as decided in the case of JITENDRA SINGH RATHOD V. SHRI BAIDYANATH AYURVED BHAWAN LTJD. AND ANOTHER, AIR 1984 SC 976, wherein, the Apex Court has held that; to deny some part of back wages by the Court amounts to the penalty imposed against the workman. Therefore, considering the said observation made by the Apex Court, according to my opinion when Labour Court has granted the 100% back wages for the period from 15.11.1996 to 31.1.2002 till the date of attaining the age of superannuation, if 25% back wages be denied to the respondent workman, it will meet the ends of justice being a reasonable punishment for the minor lapses committed by the respondent workman without any ulterior motive on his part. Therefore, the respondent workman is entitled 75% back wages of interim period from 15.11.1996 to 31.1.2001 and accordingly the award in question is required to be modified.

12. In result, the present petition is partly allowed. The award passed by the Labour Court in Reference No. 1687 of 1998 dated 28.5.2001 is modified to the extent that now the respondent-workman is entitled only 75% backwages of interim period from 15.11.1996 to 31.1.2001 and 25% back wages of interim period is denied to the respondent-workman by way of penalty imposed by this Court. Rules is made absolutely accordingly. No order as to costs. Interim relief granted earlier shall stand vacated.

(H.K.Rathod,J)

Jayanti*